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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Customer No.	23643	}	
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Group:	1651	}	
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Confirmation No.:	3917	}	
		}	
Application No.:	10/535,357	}	
		}	
Invention:	Composition and Method for Inhibition of Microorganisms	}	<u>Filed Electronically on</u>
		}	
Applicant:	Doyle et al.	}	<u>September 30, 2009</u>
		}	
Filed:	May 18, 2005	}	
		}	
Attorney Docket:	31725-77991	}	
		}	
Examiner:	Deborah K. Ware	}	

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(D)

Mail Stop Patent Extension
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

It is respectfully requested that the Office reconsider the Patent Term Adjustment determined in the above-identified U.S. Patent No. 7,575,744 and revise the Patent Term Adjustment to **681 days**.

The revised Patent Term Adjustment was determined herein according to the grounds for adjustment under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) and was calculated according to the periods of adjustment under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b).

Furthermore, the revised Patent Term Adjustment is established according to the recent decision by the U.S. Court for the District of Columbia in *Wyeth v. Dudas*, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C. 2008). A summary of the revised Patent Term Adjustment is below.

	Relevant Dates	Period of Adjustment
Examination Delay under 37 C.F.R. § 1.703(a)	<p>37 C.F.R. § 1.703(a)(1)</p> <p>Date applicants commenced national stage filing under 35 USC 371: <u>May 18, 2005</u></p> <p>Fourteen months after filing date of patent application: <u>July 18, 2006</u></p> <p>First Action mailed: <u>June 27, 2007</u></p>	Difference for which patentee should receive credit: <u>+344 days</u>
Examination Delay under 37 C.F.R. § 1.703(a)	<p>37 C.F.R. § 1.703(a)(2)</p> <p>Response Under 37 CFR§ 1.111 filed: <u>February 19, 2008</u></p> <p>Office Action mailed: <u>June 25, 2008</u></p>	Difference for which patentee should receive credit: <u>+6 days</u>
Examination Delay under 37 C.F.R. § 1.703(b)	<p>37 C.F.R. § 1.703(b)</p> <p>Filing date of patent application: <u>May 18, 2005</u></p> <p>Three years after filing date of patent application: <u>May 18, 2008</u></p> <p>Issue date of patent: <u>August 18, 2009</u></p>	Difference for which patentee should receive credit: <u>+457 days</u> , less <u>6 days</u> of overlap with Examination Delay under § 1.702(a), totaling <u>+ 451 days</u>

Circumstances under 37 C.F.R. § 1.704(c)	37 C.F.R. § 1.704(c)(7) Filing of a Noncompliant Response: Response initially filed: <u>September 18, 2008</u> Corrected Response filed: <u>January 16, 2009</u>	Difference for which § 1.702 period of adjustment should be reduced: <u>-120 days</u>
Total		<u>681 days</u>

Upon review of issued U.S. Patent No. 7,575,744, patentees noticed that the calculated PTA included an additional 107 days (running from 2/209 through 7/16/09) relative to the PTA term indicated in the Notice of Allowance. Patentees are uncertain as to how the adjustment of 107 days for USPTO delay was calculated, and patentees request further clarification. In addition patentees note that the USPTO's PTA indicated on PAIR uses a 35 USC § 371(c) date of May 25, 2009. However, patentees note the correct 35 USC § 371(c) date is May 18, 2009. Thus patentees respectfully submit they are entitled to another 7 days of PTA under 37 C.F.R. § 1.702(a).

Pursuant the decision rendered in *Wyeth v. Dudas*, a patentee is entitled to Patent Term Adjustment credit for examination delay under 37 C.F.R. § 1.702(a) in addition to any examination delay under 37 C.F.R. § 1.702(b), to the extent that the two periods of delay do not "occur on the same calendar day or days." *Wyeth*, 580 F.Supp.2d at 140, 88 U.S.P.Q.2d at 1540. A copy of *Wyeth* is attached hereto as "Attachment A" for the Office's convenience.


Accordingly, the patentee of the above-identified patent is entitled to credit for the sum of 350 days under 37 C.F.R. § 1.702(a), and 457 days under 37 C.F.R. § 1.702(b), for a total of 807 days, subject to a reduction of 120 days under 37 C.F.R. § 1.704. The overlap between the delay periods under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) is six days and, thus, pursuant the *Wyeth* decision, six days have been deducted from the total credit under 37 C.F.R. § 1.702. Thus, applicants respectfully submit the total Patent Term Adjustment is 807 minus 126 for a total of 681 days.

The above-identified patent is not subject to a terminal disclaimer.

This Request is timely filed under 37 C.F.R. § 1.705(d) as it is within two months of the date that the above-identified patent issued, August 18, 2009. The issues raised here resulted from the recalculation of the PTA from that indicated in the Notice of Allowance, and as a result of calculations which could not have been made until the issue date of the patent was known.

The Applicant respectfully requests revision of the Patent Term Adjustment as set forth above. The Commissioner is hereby authorized to charge Deposit Account No. 05-0840 in the amount of \$200.00 in payment of the reconsideration fee under 37 C.F.R. § 1.18(e). The Commissioner is also hereby authorized to charge any additional fees which may be required to Deposit Account No. 10-0435, with reference to our matter 31725-77991.

Respectfully submitted,



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